

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KATHLEEN M. ZALEWSKI,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-1231
)	Judge Joy Flowers Conti
PNC FINANCIAL SERVICES GROUP, INC.,)	Magistrate Judge Lisa Pupo Lenihan
)	
Defendant.)	

ORDER

The complaint of plaintiff Kathleen M. Zalewski ("plaintiff") was received by the clerk of court and was subsequently referred to United States Magistrate Judge Lisa Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The magistrate judge's November, 2007 Report and Recommendation ("R&R") recommended that the Motion for Summary Judgment filed by defendant PNC Financial Services Group, Inc. ("defendant") on plaintiff's remaining claims be granted. Objections were timely filed by plaintiff on December 3, 2007, with defendant's Response filed on December 12, 2007. Plaintiff's objections raised issues only with respect to the grant of summary judgment in favor of defendant on her claim under the Fair Labor Standards Act (the "FLSA"). The gist of plaintiff's

objections is that by apparently relying on evidence of compensation consultants who reviewed job profiles of the positions held by plaintiff, the magistrate judge failed to recognize that defendant had the burden to show that the duties performed by plaintiff qualified her for the administrative exemption and failed to address whether defendant had adduced evidence concerning plaintiff's primary duties. Plaintiff, however, is mistaken. The reference to the compensation consultants' review enables the court to consider the duties assigned to a certain position. The actual conclusion of the magistrate judge was that defendant "adduced evidence that plaintiff was performing work within the normal/typical parameters of her position." (R&R at 15). The R&R, however, does not specifically identify the evidence adduced for that finding, although it later describes self-reporting by plaintiff about her duties. This matter will be remanded for a clarification of the evidence relied upon for that finding.

After review of the pleadings and documents in the case, together with the R&R, the following Order is entered:

AND NOW, this 8th day of January, 2008:

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment be granted with respect to Plaintiff's claim under the American with Disabilities Act ("ADA").

The Report and Recommendation of Magistrate Judge Lenihan is adopted as the opinion of the court with respect to plaintiff's claim under the ADA and the matter relating to plaintiff's FLSA claim is remanded to the magistrate judge to consider plaintiff's objections and defendant's response to those objections.

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/s/ JOY FLOWERS CONTI

Hon. Joy Flowers Conti
United States District Judge

cc: counsel of record